

AMENDED IN SENATE APRIL 29, 2015

AMENDED IN SENATE APRIL 16, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 377

Introduced by Senator Beall

February 24, 2015

An act to amend Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 377, as amended, Beall. Income taxes: insurance taxes: credits: low-income housing: sale of credit.

Existing law establishes a low-income housing tax credit program pursuant to which the California Tax Credit Allocation Committee provides procedures and requirements for the allocation of state insurance, income, and corporation tax credit amounts among low-income housing projects based on federal law.

This bill would, for taxable years beginning on or after January 1, 2016, *and before January 1, 2026*, allow a taxpayer that is allowed a low-income housing tax credit to elect to sell all or a portion of that credit to one or more unrelated parties for each taxable year in which the credit is allowed for not less than 80% of the amount the credit to be sold, as provided.

Existing law, in the case of a partnership, requires the allocation of the credits, on or after January 1, 2009, and before January 1, 2016, to partners based upon the partnership agreement, regardless of how the federal low-income housing tax credit, as provided, is allocated to the

partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, as specified.

This bill would eliminate the January 1, 2016, date.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12206 of the Revenue and Taxation Code
2 is amended to read:

3 12206. (a) (1) There shall be allowed as a credit against the
4 “tax,” as described by Section 12201, a state low-income housing
5 tax credit in an amount equal to the amount determined in
6 subdivision (c), computed in accordance with Section 42 of the
7 Internal Revenue Code, relating to low-income housing credit,
8 except as otherwise provided in this section.

9 (2) “Taxpayer,” for purposes of this section, means the sole
10 owner in the case of a “C” corporation, the partners in the case of
11 a partnership, and the shareholders in the case of an “S”
12 corporation.

13 (3) “Housing sponsor,” for purposes of this section, means the
14 sole owner in the case of a “C” corporation, the partnership in the
15 case of a partnership, and the “S” corporation in the case of an “S”
16 corporation.

17 (b) (1) The amount of the credit allocated to any housing
18 sponsor shall be authorized by the California Tax Credit Allocation
19 Committee, or any successor thereof, based on a project’s need
20 for the credit for economic feasibility in accordance with the
21 requirements of this section.

22 (A) Except for projects to provide farmworker housing, as
23 defined in subdivision (h) of Section 50199.7 of the Health and
24 Safety Code, that are allocated credits solely under the set-aside
25 described in subdivision (c) of Section 50199.20 of the Health and
26 Safety Code, the low-income housing project shall be located in
27 California and shall meet either of the following requirements:

28 (i) The project’s housing sponsor has been allocated by the
29 California Tax Credit Allocation Committee a credit for federal
30 income tax purposes under Section 42 of the Internal Revenue
31 Code, relating to low-income housing credit.

1 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
2 Internal Revenue Code, relating to special rule where 50 percent
3 or more of building is financed with tax-exempt bonds subject to
4 volume cap.

5 (B) The California Tax Credit Allocation Committee shall not
6 require fees for the credit under this section in addition to those
7 fees required for applications for the tax credit pursuant to Section
8 42 of the Internal Revenue Code, relating to low-income housing
9 credit. The committee may require a fee if the application for the
10 credit under this section is submitted in a calendar year after the
11 year the application is submitted for the federal tax credit.

12 (C) (i) For a project that receives a preliminary reservation of
13 the state low-income housing tax credit, allowed pursuant to
14 subdivision (a), on or after January 1, 2009, the credit shall be
15 allocated to the partners of a partnership owning the project in
16 accordance with the partnership agreement, regardless of how the
17 federal low-income housing tax credit with respect to the project
18 is allocated to the partners, or whether the allocation of the credit
19 under the terms of the agreement has substantial economic effect,
20 within the meaning of Section 704(b) of the Internal Revenue
21 Code, relating to determination of distributive share.

22 (ii) This subparagraph shall not apply to a project that receives
23 a preliminary reservation of state low-income housing tax credits
24 under the set-aside described in subdivision (c) of Section 50199.20
25 of the Health and Safety Code unless the project also receives a
26 preliminary reservation of federal low-income housing tax credits.

27 (2) (A) The California Tax Credit Allocation Committee shall
28 certify to the housing sponsor the amount of tax credit under this
29 section allocated to the housing sponsor for each credit period.

30 (B) In the case of a partnership or an “S” corporation, the
31 housing sponsor shall provide a copy of the California Tax Credit
32 Allocation Committee certification to the taxpayer.

33 (C) The taxpayer shall attach a copy of the certification to any
34 return upon which a tax credit is claimed under this section.

35 (D) In the case of a failure to attach a copy of the certification
36 for the year to the return in which a tax credit is claimed under this
37 section, no credit under this section shall be allowed for that year
38 until a copy of that certification is provided.

1 (E) All elections made by the taxpayer pursuant to Section 42
2 of the Internal Revenue Code, relating to low-income housing
3 credit, shall apply to this section.

4 (F) (i) Except as described in clause (ii), for buildings located
5 in designated difficult development areas (DDAs) or qualified
6 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
7 Internal Revenue Code, relating to increase in credit for buildings
8 in high-cost areas, credits may be allocated under this section in
9 the amounts prescribed in subdivision (c), provided that the amount
10 of credit allocated under Section 42 of the Internal Revenue Code,
11 relating to low-income housing credit, is computed on 100 percent
12 of the qualified basis of the building.

13 (ii) Notwithstanding clause (i), the California Tax Credit
14 Allocation Committee may allocate the credit for buildings located
15 in DDAs or QCTs that are restricted to having 50 percent of its
16 occupants be special needs households, as defined in the California
17 Code of Regulations by the California Tax Credit Allocation
18 Committee, even if the taxpayer receives federal credits pursuant
19 to Section 42(d)(5)(B) of the Internal Revenue Code, relating to
20 increase in credit for buildings in high-cost areas, provided that
21 the credit allowed under this section shall not exceed 30 percent
22 of the eligible basis of the building.

23 (G) (i) The California Tax Credit Allocation Committee may
24 allocate a credit under this section in exchange for a credit allocated
25 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,
26 relating to increase in credit for buildings in high-cost areas, in
27 amounts up to 30 percent of the eligible basis of a building if the
28 credits allowed under Section 42 of the Internal Revenue Code,
29 relating to low-income housing credit, are reduced by an equivalent
30 amount.

31 (ii) An equivalent amount shall be determined by the California
32 Tax Credit Allocation Committee based upon the relative amount
33 required to produce an equivalent state tax credit to the taxpayer.

34 (c) Section 42(b) of the Internal Revenue Code, relating to
35 applicable percentage, shall be modified as follows:

36 (1) In the case of any qualified low-income building that receives
37 an allocation after 1989 and is a new building not federally
38 subsidized, the term “applicable percentage” means the following:

39 (A) For each of the first three years, the percentage prescribed
40 by the Secretary of the Treasury for new buildings that are not

1 federally subsidized for the taxable year, determined in accordance
2 with the requirements of Section 42(b)(2) of the Internal Revenue
3 Code, relating to temporary minimum credit rate for nonfederally
4 subsidized new buildings, in lieu of the percentage prescribed in
5 Section 42(b)(1)(A) of the Internal Revenue Code.

6 (B) For the fourth year, the difference between 30 percent and
7 the sum of the applicable percentages for the first three years.

8 (2) In the case of any qualified low-income building that receives
9 an allocation after 1989 and that is a new building that is federally
10 subsidized or that is an existing building that is “at risk of
11 conversion,” the term “applicable percentage” means the following:

12 (A) For each of the first three years, the percentage prescribed
13 by the Secretary of the Treasury for new buildings that are federally
14 subsidized for the taxable year.

15 (B) For the fourth year, the difference between 13 percent and
16 the sum of the applicable percentages for the first three years.

17 (3) For purposes of this section, the term “at risk of conversion,”
18 with respect to an existing property means a property that satisfies
19 all of the following criteria:

20 (A) The property is a multifamily rental housing development
21 in which at least 50 percent of the units receive governmental
22 assistance pursuant to any of the following:

23 (i) New construction, substantial rehabilitation, moderate
24 rehabilitation, property disposition, and loan management set-aside
25 programs, or any other program providing project-based assistance
26 pursuant to Section 8 of the United States Housing Act of 1937,
27 Section 1437f of Title 42 of the United States Code, as amended.

28 (ii) The Below-Market-Interest-Rate Program pursuant to
29 Section 221(d)(3) of the National Housing Act, Sections
30 1715l(d)(3) and (5) of Title 12 of the United States Code.

31 (iii) Section 236 of the National Housing Act, Section 1715z-1
32 of Title 12 of the United States Code.

33 (iv) Programs for rent supplement assistance pursuant to Section
34 101 of the Housing and Urban Development Act of 1965, Section
35 1701s of Title 12 of the United States Code, as amended.

36 (v) Programs pursuant to Section 515 of the Housing Act of
37 1949, Section 1485 of Title 42 of the United States Code, as
38 amended.

1 (vi) The low-income housing credit program set forth in Section
2 42 of the Internal Revenue Code, relating to low-income housing
3 credit.

4 (B) The restrictions on rent and income levels will terminate or
5 the federally insured mortgage on the property is eligible for
6 prepayment any time within five years before or after the date of
7 application to the California Tax Credit Allocation Committee.

8 (C) The entity acquiring the property enters into a regulatory
9 agreement that requires the property to be operated in accordance
10 with the requirements of this section for a period equal to the
11 greater of 55 years or the life of the property.

12 (D) The property satisfies the requirements of Section 42(e) of
13 the Internal Revenue Code relating to rehabilitation expenditures
14 treated as a separate new building, except that the provisions of
15 Section 42(e)(3)(A)(ii)(I) shall not apply.

16 (d) The term “qualified low-income housing project” as defined
17 in Section 42(c)(2) of the Internal Revenue Code, relating to
18 qualified low-income building, is modified by adding the following
19 requirements:

20 (1) The taxpayer shall be entitled to receive a cash distribution
21 from the operations of the project, after funding required reserves,
22 that, at the election of the taxpayer, is equal to:

23 (A) An amount not to exceed 8 percent of the lesser of:

24 (i) The owner equity, which shall include the amount of the
25 capital contributions actually paid to the housing sponsor and shall
26 not include any amounts until they are paid on an investor note.

27 (ii) Twenty percent of the adjusted basis of the building as of
28 the close of the first taxable year of the credit period.

29 (B) The amount of the cashflow from those units in the building
30 that are not low-income units. For purposes of computing cashflow
31 under this subparagraph, operating costs shall be allocated to the
32 low-income units using the “floor space fraction,” as defined in
33 Section 42 of the Internal Revenue Code, relating to low-income
34 housing credit.

35 (C) Any amount allowed to be distributed under subparagraph
36 (A) that is not available for distribution during the first five years
37 of the compliance period may be accumulated and distributed any
38 time during the first 15 years of the compliance period but not
39 thereafter.

1 (2) The limitation on return shall apply in the aggregate to the
2 partners if the housing sponsor is a partnership and in the aggregate
3 to the shareholders if the housing sponsor is an “S” corporation.

4 (3) The housing sponsor shall apply any cash available for
5 distribution in excess of the amount eligible to be distributed under
6 paragraph (1) to reduce the rent on rent-restricted units or to
7 increase the number of rent-restricted units subject to the tests of
8 Section 42(g)(1) of the Internal Revenue Code, relating to in
9 general.

10 (e) The provisions of Section 42(f) of the Internal Revenue
11 Code, relating to definition and special rules relating to credit
12 period, shall be modified as follows:

13 (1) The term “credit period” as defined in Section 42(f)(1) of
14 the Internal Revenue Code, relating to credit period defined, is
15 modified by substituting “four taxable years” for “10 taxable
16 years.”

17 (2) The special rule for the first taxable year of the credit period
18 under Section 42(f)(2) of the Internal Revenue Code, relating to
19 special rule for first year of credit period, shall not apply to the tax
20 credit under this section.

21 (3) Section 42(f)(3) of the Internal Revenue Code, relating to
22 determination of applicable percentage with respect to increases
23 in qualified basis after first year of credit period, is modified to
24 read:

25 If, as of the close of any taxable year in the compliance period,
26 after the first year of the credit period, the qualified basis of any
27 building exceeds the qualified basis of that building as of the close
28 of the first year of the credit period, the housing sponsor, to the
29 extent of its tax credit allocation, shall be eligible for a credit on
30 the excess in an amount equal to the applicable percentage
31 determined pursuant to subdivision (c) for the four-year period
32 beginning with the later of the taxable years in which the increase
33 in qualified basis occurs.

34 (f) The provisions of Section 42(h) of the Internal Revenue
35 Code, relating to limitation on aggregate credit allowable with
36 respect to projects located in a state, shall be modified as follows:

37 (1) Section 42(h)(2) of the Internal Revenue Code, relating to
38 allocated credit amount to apply to all taxable years ending during
39 or after credit allocation year, shall not be applicable and instead
40 the following provisions shall be applicable:

1 The total amount for the four-year credit period of the housing
2 credit dollars allocated in a calendar year to any building shall
3 reduce the aggregate housing credit dollar amount of the California
4 Tax Credit Allocation Committee for the calendar year in which
5 the allocation is made.

6 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
7 (7), and (8) of Section 42(h) of the Internal Revenue Code, relating
8 to limitation on aggregate credit allowable with respect to projects
9 located in a state, shall not be applicable.

10 (g) The aggregate housing credit dollar amount that may be
11 allocated annually by the California Tax Credit Allocation
12 Committee pursuant to this section, Section 17058, and Section
13 23610.5 shall be an amount equal to the sum of all the following:

14 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
15 year, and, for the 2002 calendar year and each calendar year
16 thereafter, seventy million dollars (\$70,000,000) increased by the
17 percentage, if any, by which the Consumer Price Index for the
18 preceding calendar year exceeds the Consumer Price Index for the
19 2001 calendar year. For the purposes of this paragraph, the term
20 “Consumer Price Index” means the last Consumer Price Index for
21 All Urban Consumers published by the federal Department of
22 Labor.

23 (2) The unused housing credit ceiling, if any, for the preceding
24 calendar years.

25 (3) The amount of housing credit ceiling returned in the calendar
26 year. For purposes of this paragraph, the amount of housing credit
27 dollar amount returned in the calendar year equals the housing
28 credit dollar amount previously allocated to any project that does
29 not become a qualified low-income housing project within the
30 period required by this section or to any project with respect to
31 which an allocation is canceled by mutual consent of the California
32 Tax Credit Allocation Committee and the allocation recipient.

33 (4) Five hundred thousand dollars (\$500,000) per calendar year
34 for projects to provide farmworker housing, as defined in
35 subdivision (h) of Section 50199.7 of the Health and Safety Code.

36 (5) The amount of any unallocated or returned credits under
37 former Sections 17053.14, 23608.2, and 23608.3, as those sections
38 read prior to January 1, 2009, until fully exhausted for projects to
39 provide farmworker housing, as defined in subdivision (h) of
40 Section 50199.7 of the Health and Safety Code.

1 (h) The term “compliance period” as defined in Section 42(i)(1)
2 of the Internal Revenue Code, relating to compliance period, is
3 modified to mean, with respect to any building, the period of 30
4 consecutive taxable years beginning with the first taxable year of
5 the credit period with respect thereto.

6 (i) (1) Section 42(j) of the Internal Revenue Code, relating to
7 recapture of credit, shall not be applicable and the provisions in
8 paragraph (2) shall be substituted in its place.

9 (2) The requirements of this section shall be set forth in a
10 regulatory agreement between the California Tax Credit Allocation
11 Committee and the housing sponsor, and this agreement shall be
12 subordinated, when required, to any lien or encumbrance of any
13 banks or other institutional lenders to the project. The regulatory
14 agreement entered into pursuant to subdivision (f) of Section
15 50199.14 of the Health and Safety Code, shall apply, provided that
16 the agreement includes all of the following provisions:

17 (A) A term not less than the compliance period.

18 (B) A requirement that the agreement be recorded in the official
19 records of the county in which the qualified low-income housing
20 project is located.

21 (C) A provision stating which state and local agencies can
22 enforce the regulatory agreement in the event the housing sponsor
23 fails to satisfy any of the requirements of this section.

24 (D) A provision that the regulatory agreement shall be deemed
25 a contract enforceable by tenants as third-party beneficiaries thereto
26 and that allows individuals, whether prospective, present, or former
27 occupants of the building, who meet the income limitation
28 applicable to the building, the right to enforce the regulatory
29 agreement in any state court.

30 (E) A provision incorporating the requirements of Section 42
31 of the Internal Revenue Code, relating to low-income housing
32 credit, as modified by this section.

33 (F) A requirement that the housing sponsor notify the California
34 Tax Credit Allocation Committee or its designee and the local
35 agency that can enforce the regulatory agreement if there is a
36 determination by the Internal Revenue Service that the project is
37 not in compliance with Section 42(g) of the Internal Revenue Code,
38 relating to qualified low-income housing project.

39 (G) A requirement that the housing sponsor, as security for the
40 performance of the housing sponsor’s obligations under the

1 regulatory agreement, assign the housing sponsor's interest in rents
2 that it receives from the project, provided that until there is a
3 default under the regulatory agreement, the housing sponsor is
4 entitled to collect and retain the rents.

5 (H) A provision that the remedies available in the event of a
6 default under the regulatory agreement that is not cured within a
7 reasonable cure period include, but are not limited to, allowing
8 any of the parties designated to enforce the regulatory agreement
9 to collect all rents with respect to the project; taking possession of
10 the project and operating the project in accordance with the
11 regulatory agreement until the enforcer determines the housing
12 sponsor is in a position to operate the project in accordance with
13 the regulatory agreement; applying to any court for specific
14 performance; securing the appointment of a receiver to operate
15 the project; or any other relief as may be appropriate.

16 (j) (1) The committee shall allocate the housing credit on a
17 regular basis consisting of two or more periods in each calendar
18 year during which applications may be filed and considered. The
19 committee shall establish application filing deadlines, the maximum
20 percentage of federal and state low-income housing tax credit
21 ceiling that may be allocated by the committee in that period, and
22 the approximate date on which allocations shall be made. If the
23 enactment of federal or state law, the adoption of rules or
24 regulations, or other similar events prevent the use of two allocation
25 periods, the committee may reduce the number of periods and
26 adjust the filing deadlines, maximum percentage of credit allocated,
27 and the allocation dates.

28 (2) The committee shall adopt a qualified allocation plan, as
29 provided in Section 42(m)(1) of the Internal Revenue Code, relating
30 to plans for allocation of credit among projects. In adopting this
31 plan, the committee shall comply with the provisions of Sections
32 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,
33 relating to qualified allocation plan and relating to certain selection
34 criteria must be used, respectively.

35 (3) Notwithstanding Section 42(m) of the Internal Revenue
36 Code, relating to responsibilities of housing credit agencies, the
37 California Tax Credit Allocation Committee shall allocate housing
38 credits in accordance with the qualified allocation plan and
39 regulations, which shall include the following provisions:

1 (A) All housing sponsors, as defined by paragraph (3) of
2 subdivision (a), shall demonstrate at the time the application is
3 filed with the committee that the project meets the following
4 threshold requirements:

5 (i) The housing sponsor shall demonstrate that there is a need
6 and demand for low-income housing in the community or region
7 for which it is proposed.

8 (ii) The project's proposed financing, including tax credit
9 proceeds, shall be sufficient to complete the project and that the
10 proposed operating income shall be adequate to operate the project
11 for the extended use period.

12 (iii) The project shall have enforceable financing commitments,
13 either construction or permanent financing, for at least 50 percent
14 of the total estimated financing of the project.

15 (iv) The housing sponsor shall have and maintain control of the
16 site for the project.

17 (v) The housing sponsor shall demonstrate that the project
18 complies with all applicable local land use and zoning ordinances.

19 (vi) The housing sponsor shall demonstrate that the project
20 development team has the experience and the financial capacity
21 to ensure project completion and operation for the extended use
22 period.

23 (vii) The housing sponsor shall demonstrate the amount of tax
24 credit that is necessary for the financial feasibility of the project
25 and its viability as a qualified low-income housing project
26 throughout the extended use period, taking into account operating
27 expenses, a supportable debt service, reserves, funds set aside for
28 rental subsidies and required equity, and a development fee that
29 does not exceed a specified percentage of the eligible basis of the
30 project prior to inclusion of the development fee in the eligible
31 basis, as determined by the committee.

32 (B) The committee shall give a preference to those projects
33 satisfying all of the threshold requirements of subparagraph (A)
34 if both of the following apply:

35 (i) The project serves the lowest income tenants at rents
36 affordable to those tenants.

37 (ii) The project is obligated to serve qualified tenants for the
38 longest period.

1 (C) In addition to the provisions of subparagraphs (A) and (B),
2 the committee shall use the following criteria in allocating housing
3 credits:

4 (i) Projects serving large families in which a substantial number,
5 as defined by the committee, of all residential units are low-income
6 units with three and more bedrooms.

7 (ii) Projects providing single-room occupancy units serving
8 very low income tenants.

9 (iii) Existing projects that are “at risk of conversion,” as defined
10 by paragraph (3) of subdivision (c).

11 (iv) Projects for which a public agency provides direct or indirect
12 long-term financial support for at least 15 percent of the total
13 project development costs or projects for which the owner’s equity
14 constitutes at least 30 percent of the total project development
15 costs.

16 (v) Projects that provide tenant amenities not generally available
17 to residents of low-income housing projects.

18 (4) For purposes of allocating credits pursuant to this section,
19 the committee shall not give preference to any project by virtue
20 of the date of submission of its application except to break a tie
21 when two or more of the projects have an equal rating.

22 (k) Section 42(l) of the Internal Revenue Code, relating to
23 certifications and other reports to secretary, shall be modified as
24 follows:

25 The term “secretary” shall be replaced by the term “Franchise
26 Tax Board.”

27 (l) In the case where the credit allowed under this section
28 exceeds the “tax,” the excess may be carried over to reduce the
29 “tax” in the following year, and succeeding years if necessary,
30 until the credit has been exhausted.

31 (m) The provisions of Section 11407(a) of Public Law 101-508,
32 relating to the effective date of the extension of the low-income
33 housing credit, shall apply to calendar years after 1993.

34 (n) The provisions of Section 11407(c) of Public Law 101-508,
35 relating to election to accelerate credit, shall not apply.

36 (o) ~~(4)~~ Notwithstanding any other law, for any credits awarded
37 under this section for taxable years beginning on or after January
38 1, 2016, *and before January 1, 2026*, a taxpayer may make an
39 irrevocable election in its application to the California Tax Credit
40 Allocation Committee to sell all or any portion of any credit

1 allowed under this section to one or more unrelated parties for
2 each taxable year in which the credit is allowed for consideration
3 that is not less than 80 percent of the amount of the credit. A
4 *taxpayer shall notify the California Tax Credit Allocation*
5 *Committee of this election within ten days.*

6 ~~(2) (A) The sale authorized by paragraph (1) may be~~
7 ~~documented based on any method selected by the taxpayer that~~
8 ~~originally receives the credit.~~

9 ~~(B) The sale authorized by paragraph (1) may be changed for~~
10 ~~any subsequent taxable year if the sale is expressly shown on each~~
11 ~~of the returns of both the transferor and the transferee that sell and~~
12 ~~receive the credit.~~

13 ~~(C) (i) The taxpayer that originally received the credit shall~~
14 ~~report to the California Tax Credit Allocation Committee prior to~~
15 ~~the sale of the credit, in the form and manner specified by the~~
16 ~~California Tax Credit Allocation Committee, all required~~
17 ~~information regarding the purchase and sale of the credit, including~~
18 ~~the social security or other taxpayer identification number of the~~
19 ~~unrelated party to whom the credit has been sold, the face amount~~
20 ~~of the credit sold, and the amount of consideration received by the~~
21 ~~taxpayer for the sale of the credit.~~

22 ~~(ii) The California Tax Credit Allocation Committee shall~~
23 ~~provide an annual listing to the Franchise Tax Board, in a form~~
24 ~~and manner agreed upon by the California Tax Credit Allocation~~
25 ~~Committee and the Franchise Tax Board, of the taxpayers that~~
26 ~~have sold or purchased a credit pursuant to this subdivision.~~

27 ~~(3) A credit may be sold pursuant to this subdivision to more~~
28 ~~than one unrelated party, and shall not be resold by the unrelated~~
29 ~~party to another taxpayer or other party.~~

30 ~~(4) Notwithstanding any other provision of law, the taxpayer~~
31 ~~that originally received the credit that is sold pursuant to paragraph~~
32 ~~(1) shall remain solely liable for all obligations and liabilities~~
33 ~~imposed on the taxpayer by this section with respect to the credit,~~
34 ~~none of which shall apply to any party to whom the credit has been~~
35 ~~sold or subsequently transferred. Parties who purchase credits~~
36 ~~pursuant to paragraph (1) shall be entitled to utilize the purchased~~
37 ~~credits in the same manner in which the taxpayer that originally~~
38 ~~received the credit could utilize them.~~

1 ~~(5) A taxpayer shall not sell a credit allowed by this section if~~
2 ~~the taxpayer was allowed the credit on any tax return of the~~
3 ~~taxpayer.~~

4 ~~(6) Notwithstanding paragraph (1), the taxpayer, with the~~
5 ~~approval of the Executive Director of the California Tax Credit~~
6 ~~Allocation Committee, may rescind the election to sell all or any~~
7 ~~portion of the credit allowed under this section if the consideration~~
8 ~~for the credit falls below 80% of the amount of the credit after the~~
9 ~~California Tax Credit Allocation Committee reservation.~~

10 (p) This section shall remain in effect for as long as Section 42
11 of the Internal Revenue Code, relating to low-income housing
12 credit, remains in effect.

13 SEC. 2. Section 17058 of the Revenue and Taxation Code is
14 amended to read:

15 17058. (a) (1) There shall be allowed as a credit against the
16 “net tax,” as defined in Section 17039, a state low-income housing
17 tax credit in an amount equal to the amount determined in
18 subdivision (c), computed in accordance with Section 42 of the
19 Internal Revenue Code, relating to low-income housing credit,
20 except as otherwise provided in this section.

21 (2) “Taxpayer,” for purposes of this section, means the sole
22 owner in the case of an individual, the partners in the case of a
23 partnership, and the shareholders in the case of an “S” corporation.

24 (3) “Housing sponsor,” for purposes of this section, means the
25 sole owner in the case of an individual, the partnership in the case
26 of a partnership, and the “S” corporation in the case of an “S”
27 corporation.

28 (b) (1) The amount of the credit allocated to any housing
29 sponsor shall be authorized by the California Tax Credit Allocation
30 Committee, or any successor thereof, based on a project’s need
31 for the credit for economic feasibility in accordance with the
32 requirements of this section.

33 (A) The low-income housing project shall be located in
34 California and shall meet either of the following requirements:

35 (i) Except for projects to provide farmworker housing, as defined
36 in subdivision (h) of Section 50199.7 of the Health and Safety
37 Code, that are allocated credits solely under the set-aside described
38 in subdivision (c) of Section 50199.20 of the Health and Safety
39 Code, the project’s housing sponsor has been allocated by the
40 California Tax Credit Allocation Committee a credit for federal

1 income tax purposes under Section 42 of the Internal Revenue
2 Code, relating to low-income housing credit.

3 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
4 Internal Revenue Code, relating to special rule where 50 percent
5 or more of building is financed with tax-exempt bonds subject to
6 volume cap.

7 (B) The California Tax Credit Allocation Committee shall not
8 require fees for the credit under this section in addition to those
9 fees required for applications for the tax credit pursuant to Section
10 42 of the Internal Revenue Code, relating to low-income housing
11 credit. The committee may require a fee if the application for the
12 credit under this section is submitted in a calendar year after the
13 year the application is submitted for the federal tax credit.

14 (C) (i) For a project that receives a preliminary reservation of
15 the state low-income housing tax credit, allowed pursuant to
16 subdivision (a), on or after January 1, 2009, the credit shall be
17 allocated to the partners of a partnership owning the project in
18 accordance with the partnership agreement, regardless of how the
19 federal low-income housing tax credit with respect to the project
20 is allocated to the partners, or whether the allocation of the credit
21 under the terms of the agreement has substantial economic effect,
22 within the meaning of Section 704(b) of the Internal Revenue
23 Code, relating to determination of distributive share.

24 (ii) To the extent the allocation of the credit to a partner under
25 this section lacks substantial economic effect, any loss or deduction
26 otherwise allowable under this part that is attributable to the sale
27 or other disposition of that partner's partnership interest made prior
28 to the expiration of the federal credit shall not be allowed in the
29 taxable year in which the sale or other disposition occurs, but shall
30 instead be deferred until and treated as if it occurred in the first
31 taxable year immediately following the taxable year in which the
32 federal credit period expires for the project described in clause (i).

33 (iii) This subparagraph shall not apply to a project that receives
34 a preliminary reservation of state low-income housing tax credits
35 under the set-aside described in subdivision (c) of Section 50199.20
36 of the Health and Safety Code unless the project also receives a
37 preliminary reservation of federal low-income housing tax credits.

38 (2) (A) The California Tax Credit Allocation Committee shall
39 certify to the housing sponsor the amount of tax credit under this
40 section allocated to the housing sponsor for each credit period.

1 (B) In the case of a partnership or an “S” corporation, the
2 housing sponsor shall provide a copy of the California Tax Credit
3 Allocation Committee certification to the taxpayer.

4 (C) The taxpayer shall, upon request, provide a copy of the
5 certification to the Franchise Tax Board.

6 (D) All elections made by the taxpayer pursuant to Section 42
7 of the Internal Revenue Code, relating to low-income housing
8 credit, shall apply to this section.

9 (E) (i) Except as described in clause (ii), for buildings located
10 in designated difficult development areas (DDAs) or qualified
11 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
12 Internal Revenue Code, relating to increase in credit for buildings
13 in high-cost areas, credits may be allocated under this section in
14 the amounts prescribed in subdivision (c), provided that the amount
15 of credit allocated under Section 42 of the Internal Revenue Code,
16 relating to low-income housing credit, is computed on 100 percent
17 of the qualified basis of the building.

18 (ii) Notwithstanding clause (i), the California Tax Credit
19 Allocation Committee may allocate the credit for buildings located
20 in DDAs or QCTs that are restricted to having 50 percent of its
21 occupants be special needs households, as defined in the California
22 Code of Regulations by the California Tax Credit Allocation
23 Committee, even if the taxpayer receives federal credits pursuant
24 to Section 42(d)(5)(B) of the Internal Revenue Code, relating to
25 increase in credit for buildings in high-cost areas, provided that
26 the credit allowed under this section shall not exceed 30 percent
27 of the eligible basis of the building.

28 (G) (i) The California Tax Credit Allocation Committee may
29 allocate a credit under this section in exchange for a credit allocated
30 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,
31 relating to increase in credit for buildings in high-cost areas, in
32 amounts up to 30 percent of the eligible basis of a building if the
33 credits allowed under Section 42 of the Internal Revenue Code,
34 relating to low-income housing credit, are reduced by an equivalent
35 amount.

36 (ii) An equivalent amount shall be determined by the California
37 Tax Credit Allocation Committee based upon the relative amount
38 required to produce an equivalent state tax credit to the taxpayer.

39 (c) Section 42(b) of the Internal Revenue Code, relating to
40 applicable percentage, shall be modified as follows:

1 (1) In the case of any qualified low-income building placed in
2 service by the housing sponsor during 1987, the term “applicable
3 percentage” means 9 percent for each of the first three years and
4 3 percent for the fourth year for new buildings (whether or not the
5 building is federally subsidized) and for existing buildings.

6 (2) In the case of any qualified low-income building that receives
7 an allocation after 1989 and is a new building not federally
8 subsidized, the term “applicable percentage” means the following:

9 (A) For each of the first three years, the percentage prescribed
10 by the Secretary of the Treasury for new buildings that are not
11 federally subsidized for the taxable year, determined in accordance
12 with the requirements of Section 42(b)(2) of the Internal Revenue
13 Code, relating to temporary minimum credit rate for nonfederally
14 subsidized new buildings, in lieu of the percentage prescribed in
15 Section 42(b)(1)(A) of the Internal Revenue Code.

16 (B) For the fourth year, the difference between 30 percent and
17 the sum of the applicable percentages for the first three years.

18 (3) In the case of any qualified low-income building that receives
19 an allocation after 1989 and that is a new building that is federally
20 subsidized or that is an existing building that is “at risk of
21 conversion,” the term “applicable percentage” means the following:

22 (A) For each of the first three years, the percentage prescribed
23 by the Secretary of the Treasury for new buildings that are federally
24 subsidized for the taxable year.

25 (B) For the fourth year, the difference between 13 percent and
26 the sum of the applicable percentages for the first three years.

27 (4) For purposes of this section, the term “at risk of conversion,”
28 with respect to an existing property means a property that satisfies
29 all of the following criteria:

30 (A) The property is a multifamily rental housing development
31 in which at least 50 percent of the units receive governmental
32 assistance pursuant to any of the following:

33 (i) New construction, substantial rehabilitation, moderate
34 rehabilitation, property disposition, and loan management set-aside
35 programs, or any other program providing project-based assistance
36 pursuant to Section 8 of the United States Housing Act of 1937,
37 Section 1437f of Title 42 of the United States Code, as amended.

38 (ii) The Below-Market-Interest-Rate Program pursuant to
39 Section 221(d)(3) of the National Housing Act, Sections
40 1715l(d)(3) and (5) of Title 12 of the United States Code.

1 (iii) Section 236 of the National Housing Act, Section 1715z-1
2 of Title 12 of the United States Code.

3 (iv) Programs for rent supplement assistance pursuant to Section
4 101 of the Housing and Urban Development Act of 1965, Section
5 1701s of Title 12 of the United States Code, as amended.

6 (v) Programs pursuant to Section 515 of the Housing Act of
7 1949, Section 1485 of Title 42 of the United States Code, as
8 amended.

9 (vi) The low-income housing credit program set forth in Section
10 42 of the Internal Revenue Code, relating to low-income housing
11 credit.

12 (B) The restrictions on rent and income levels will terminate or
13 the federally insured mortgage on the property is eligible for
14 prepayment any time within five years before or after the date of
15 application to the California Tax Credit Allocation Committee.

16 (C) The entity acquiring the property enters into a regulatory
17 agreement that requires the property to be operated in accordance
18 with the requirements of this section for a period equal to the
19 greater of 55 years or the life of the property.

20 (D) The property satisfies the requirements of Section 42(e) of
21 the Internal Revenue Code relating to rehabilitation expenditures
22 treated as a separate new building, except that the provisions of
23 Section 42(e)(3)(A)(ii)(I) shall not apply.

24 (d) The term “qualified low-income housing project” as defined
25 in Section 42(c)(2) of the Internal Revenue Code, relating to
26 qualified low-income building, is modified by adding the following
27 requirements:

28 (1) The taxpayer shall be entitled to receive a cash distribution
29 from the operations of the project, after funding required reserves,
30 that, at the election of the taxpayer, is equal to:

31 (A) An amount not to exceed 8 percent of the lesser of:

32 (i) The owner equity, which shall include the amount of the
33 capital contributions actually paid to the housing sponsor and shall
34 not include any amounts until they are paid on an investor note.

35 (ii) Twenty percent of the adjusted basis of the building as of
36 the close of the first taxable year of the credit period.

37 (B) The amount of the cashflow from those units in the building
38 that are not low-income units. For purposes of computing cashflow
39 under this subparagraph, operating costs shall be allocated to the
40 low-income units using the “floor space fraction,” as defined in

1 Section 42 of the Internal Revenue Code, relating to low-income
2 housing credit.

3 (C) Any amount allowed to be distributed under subparagraph
4 (A) that is not available for distribution during the first five years
5 of the compliance period may be accumulated and distributed any
6 time during the first 15 years of the compliance period but not
7 thereafter.

8 (2) The limitation on return shall apply in the aggregate to the
9 partners if the housing sponsor is a partnership and in the aggregate
10 to the shareholders if the housing sponsor is an “S” corporation.

11 (3) The housing sponsor shall apply any cash available for
12 distribution in excess of the amount eligible to be distributed under
13 paragraph (1) to reduce the rent on rent-restricted units or to
14 increase the number of rent-restricted units subject to the tests of
15 Section 42(g)(1) of the Internal Revenue Code, relating to in
16 general.

17 (e) The provisions of Section 42(f) of the Internal Revenue
18 Code, relating to definition and special rules relating to credit
19 period, shall be modified as follows:

20 (1) The term “credit period” as defined in Section 42(f)(1) of
21 the Internal Revenue Code, relating to credit period defined, is
22 modified by substituting “four taxable years” for “10 taxable
23 years.”

24 (2) The special rule for the first taxable year of the credit period
25 under Section 42(f)(2) of the Internal Revenue Code, relating to
26 special rule for first year of credit period, shall not apply to the tax
27 credit under this section.

28 (3) Section 42(f)(3) of the Internal Revenue Code, relating to
29 determination of applicable percentage with respect to increases
30 in qualified basis after first year of credit period, is modified to
31 read:

32 If, as of the close of any taxable year in the compliance period,
33 after the first year of the credit period, the qualified basis of any
34 building exceeds the qualified basis of that building as of the close
35 of the first year of the credit period, the housing sponsor, to the
36 extent of its tax credit allocation, shall be eligible for a credit on
37 the excess in an amount equal to the applicable percentage
38 determined pursuant to subdivision (c) for the four-year period
39 beginning with the taxable year in which the increase in qualified
40 basis occurs.

1 (f) The provisions of Section 42(h) of the Internal Revenue
2 Code, relating to limitation on aggregate credit allowable with
3 respect to projects located in a state, shall be modified as follows:

4 (1) Section 42(h)(2) of the Internal Revenue Code, relating to
5 allocated credit amount to apply to all taxable years ending during
6 or after credit allocation year, shall not be applicable and instead
7 the following provisions shall be applicable:

8 The total amount for the four-year credit period of the housing
9 credit dollars allocated in a calendar year to any building shall
10 reduce the aggregate housing credit dollar amount of the California
11 Tax Credit Allocation Committee for the calendar year in which
12 the allocation is made.

13 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
14 (7), and (8) of Section 42(h) of the Internal Revenue Code, relating
15 to limitation on aggregate credit allowable with respect to projects
16 located in a state, shall not be applicable.

17 (g) The aggregate housing credit dollar amount that may be
18 allocated annually by the California Tax Credit Allocation
19 Committee pursuant to this section, Section 12206, and Section
20 23610.5 shall be an amount equal to the sum of all the following:

21 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
22 year, and, for the 2002 calendar year and each calendar year
23 thereafter, seventy million dollars (\$70,000,000) increased by the
24 percentage, if any, by which the Consumer Price Index for the
25 preceding calendar year exceeds the Consumer Price Index for the
26 2001 calendar year. For the purposes of this paragraph, the term
27 “Consumer Price Index” means the last Consumer Price Index for
28 All Urban Consumers published by the federal Department of
29 Labor.

30 (2) The unused housing credit ceiling, if any, for the preceding
31 calendar years.

32 (3) The amount of housing credit ceiling returned in the calendar
33 year. For purposes of this paragraph, the amount of housing credit
34 dollar amount returned in the calendar year equals the housing
35 credit dollar amount previously allocated to any project that does
36 not become a qualified low-income housing project within the
37 period required by this section or to any project with respect to
38 which an allocation is canceled by mutual consent of the California
39 Tax Credit Allocation Committee and the allocation recipient.

1 (4) Five hundred thousand dollars (\$500,000) per calendar year
2 for projects to provide farmworker housing, as defined in
3 subdivision (h) of Section 50199.7 of the Health and Safety Code.

4 (5) The amount of any unallocated or returned credits under
5 former Sections 17053.14, 23608.2, and 23608.3, as those sections
6 read prior to January 1, 2009, until fully exhausted for projects to
7 provide farmworker housing, as defined in subdivision (h) of
8 Section 50199.7 of the Health and Safety Code.

9 (h) The term “compliance period” as defined in Section 42(i)(1)
10 of the Internal Revenue Code, relating to compliance period, is
11 modified to mean, with respect to any building, the period of 30
12 consecutive taxable years beginning with the first taxable year of
13 the credit period with respect thereto.

14 (i) Section 42(j) of the Internal Revenue Code, relating to
15 recapture of credit, shall not be applicable and the following
16 requirements of this section shall be set forth in a regulatory
17 agreement between the California Tax Credit Allocation Committee
18 and the housing sponsor, and this agreement shall be subordinated,
19 when required, to any lien or encumbrance of any banks or other
20 institutional lenders to the project. The regulatory agreement
21 entered into pursuant to subdivision (f) of Section 50199.14 of the
22 Health and Safety Code shall apply, provided that the agreement
23 includes all of the following provisions:

24 (1) A term not less than the compliance period.

25 (2) A requirement that the agreement be recorded in the official
26 records of the county in which the qualified low-income housing
27 project is located.

28 (3) A provision stating which state and local agencies can
29 enforce the regulatory agreement in the event the housing sponsor
30 fails to satisfy any of the requirements of this section.

31 (4) A provision that the regulatory agreement shall be deemed
32 a contract enforceable by tenants as third-party beneficiaries thereto
33 and that allows individuals, whether prospective, present, or former
34 occupants of the building, who meet the income limitation
35 applicable to the building, the right to enforce the regulatory
36 agreement in any state court.

37 (5) A provision incorporating the requirements of Section 42
38 of the Internal Revenue Code, relating to low-income housing
39 credit, as modified by this section.

1 (6) A requirement that the housing sponsor notify the California
2 Tax Credit Allocation Committee or its designee if there is a
3 determination by the Internal Revenue Service that the project is
4 not in compliance with Section 42(g) of the Internal Revenue Code,
5 relating to qualified low-income housing project.

6 (7) A requirement that the housing sponsor, as security for the
7 performance of the housing sponsor's obligations under the
8 regulatory agreement, assign the housing sponsor's interest in rents
9 that it receives from the project, provided that until there is a
10 default under the regulatory agreement, the housing sponsor is
11 entitled to collect and retain the rents.

12 (8) A provision that the remedies available in the event of a
13 default under the regulatory agreement that is not cured within a
14 reasonable cure period include, but are not limited to, allowing
15 any of the parties designated to enforce the regulatory agreement
16 to collect all rents with respect to the project; taking possession of
17 the project and operating the project in accordance with the
18 regulatory agreement until the enforcer determines the housing
19 sponsor is in a position to operate the project in accordance with
20 the regulatory agreement; applying to any court for specific
21 performance; securing the appointment of a receiver to operate
22 the project; or any other relief as may be appropriate.

23 (j) (1) The committee shall allocate the housing credit on a
24 regular basis consisting of two or more periods in each calendar
25 year during which applications may be filed and considered. The
26 committee shall establish application filing deadlines, the maximum
27 percentage of federal and state low-income housing tax credit
28 ceiling that may be allocated by the committee in that period, and
29 the approximate date on which allocations shall be made. If the
30 enactment of federal or state law, the adoption of rules or
31 regulations, or other similar events prevent the use of two allocation
32 periods, the committee may reduce the number of periods and
33 adjust the filing deadlines, maximum percentage of credit allocated,
34 and the allocation dates.

35 (2) The committee shall adopt a qualified allocation plan, as
36 provided in Section 42(m)(1) of the Internal Revenue Code, relating
37 to plans for allocation of credit among projects. In adopting this
38 plan, the committee shall comply with the provisions of Sections
39 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,

1 relating to qualified allocation plan and relating to certain selection
2 criteria must be used, respectively.

3 (3) Notwithstanding Section 42(m) of the Internal Revenue
4 Code, relating to responsibilities of housing credit agencies, the
5 California Tax Credit Allocation Committee shall allocate housing
6 credits in accordance with the qualified allocation plan and
7 regulations, which shall include the following provisions:

8 (A) All housing sponsors, as defined by paragraph (3) of
9 subdivision (a), shall demonstrate at the time the application is
10 filed with the committee that the project meets the following
11 threshold requirements:

12 (i) The housing sponsor shall demonstrate that there is a need
13 and demand for low-income housing in the community or region
14 for which it is proposed.

15 (ii) The project's proposed financing, including tax credit
16 proceeds, shall be sufficient to complete the project and that the
17 proposed operating income shall be adequate to operate the project
18 for the extended use period.

19 (iii) The project shall have enforceable financing commitments,
20 either construction or permanent financing, for at least 50 percent
21 of the total estimated financing of the project.

22 (iv) The housing sponsor shall have and maintain control of the
23 site for the project.

24 (v) The housing sponsor shall demonstrate that the project
25 complies with all applicable local land use and zoning ordinances.

26 (vi) The housing sponsor shall demonstrate that the project
27 development team has the experience and the financial capacity
28 to ensure project completion and operation for the extended use
29 period.

30 (vii) The housing sponsor shall demonstrate the amount of tax
31 credit that is necessary for the financial feasibility of the project
32 and its viability as a qualified low-income housing project
33 throughout the extended use period, taking into account operating
34 expenses, a supportable debt service, reserves, funds set aside for
35 rental subsidies and required equity, and a development fee that
36 does not exceed a specified percentage of the eligible basis of the
37 project prior to inclusion of the development fee in the eligible
38 basis, as determined by the committee.

1 (B) The committee shall give a preference to those projects
2 satisfying all of the threshold requirements of subparagraph (A)
3 if both of the following apply:

4 (i) The project serves the lowest income tenants at rents
5 affordable to those tenants.

6 (ii) The project is obligated to serve qualified tenants for the
7 longest period.

8 (C) In addition to the provisions of subparagraphs (A) and (B),
9 the committee shall use the following criteria in allocating housing
10 credits:

11 (i) Projects serving large families in which a substantial number,
12 as defined by the committee, of all residential units are low-income
13 units with three and more bedrooms.

14 (ii) Projects providing single-room occupancy units serving
15 very low income tenants.

16 (iii) Existing projects that are “at risk of conversion,” as defined
17 by paragraph (4) of subdivision (c).

18 (iv) Projects for which a public agency provides direct or indirect
19 long-term financial support for at least 15 percent of the total
20 project development costs or projects for which the owner’s equity
21 constitutes at least 30 percent of the total project development
22 costs.

23 (v) Projects that provide tenant amenities not generally available
24 to residents of low-income housing projects.

25 (4) For purposes of allocating credits pursuant to this section,
26 the committee shall not give preference to any project by virtue
27 of the date of submission of its application.

28 (k) Section 42(l) of the Internal Revenue Code, relating to
29 certifications and other reports to secretary, shall be modified as
30 follows:

31 The term “secretary” shall be replaced by the term “Franchise
32 Tax Board.”

33 (l) In the case where the credit allowed under this section
34 exceeds the net tax, the excess may be carried over to reduce the
35 net tax in the following year, and succeeding years if necessary,
36 until the credit has been exhausted.

37 (m) A project that received an allocation of a 1989 federal
38 housing credit dollar amount shall be eligible to receive an
39 allocation of a 1990 state housing credit dollar amount, subject to
40 all of the following conditions:

1 (1) The project was not placed in service prior to 1990.

2 (2) To the extent the amendments made to this section by the
3 Statutes of 1990 conflict with any provisions existing in this section
4 prior to those amendments, the prior provisions of law shall prevail.

5 (3) Notwithstanding paragraph (2), a project applying for an
6 allocation under this subdivision shall be subject to the
7 requirements of paragraph (3) of subdivision (j).

8 (n) The credit period with respect to an allocation of credit in
9 1989 by the California Tax Credit Allocation Committee of which
10 any amount is attributable to unallocated credit from 1987 or 1988
11 shall not begin until after December 31, 1989.

12 (o) The provisions of Section 11407(a) of Public Law 101-508,
13 relating to the effective date of the extension of the low-income
14 housing credit, shall apply to calendar years after 1989.

15 (p) The provisions of Section 11407(c) of Public Law 101-508,
16 relating to election to accelerate credit, shall not apply.

17 (q) Any unused credit may continue to be carried forward, as
18 provided in subdivision (l), until the credit has been exhausted.

19 This section shall remain in effect on and after December 1,
20 1990, for as long as Section 42 of the Internal Revenue Code,
21 relating to low-income housing credit, remains in effect.

22 (r) ~~(1)~~ Notwithstanding any other law, for any credits awarded
23 under this section for taxable years beginning on or after January
24 1, 2016, *and before January 1, 2026*, a taxpayer may make an
25 irrevocable election in its application to the California Tax Credit
26 Allocation Committee to sell all or any portion of any credit
27 allowed under this section to one or more unrelated parties for
28 each taxable year in which the credit is allowed for consideration
29 that is not less than 80 percent of the amount of the credit. *A*
30 *taxpayer shall notify the California Tax Credit Allocation*
31 *Committee of this election within ten days.*

32 ~~(2) (A) The sale authorized by paragraph (1) may be~~
33 ~~documented based on any method selected by the taxpayer that~~
34 ~~originally receives the credit.~~

35 ~~(B) The sale authorized by paragraph (1) may be changed for~~
36 ~~any subsequent taxable year if the sale is expressly shown on each~~
37 ~~of the returns of both the transferor and the transferee that sell and~~
38 ~~receive the credit.~~

39 ~~(C) (i) The taxpayer that originally received the credit shall~~
40 ~~report to the California Tax Credit Allocation Committee prior to~~

1 the sale of the credit, in the form and manner specified by the
2 California Tax Credit Allocation Committee, all required
3 information regarding the purchase and sale of the credit, including
4 the social security or other taxpayer identification number of the
5 unrelated party to whom the credit has been sold, the face amount
6 of the credit sold, and the amount of consideration received by the
7 taxpayer for the sale of the credit.

8 (ii) The California Tax Credit Allocation Committee shall
9 provide an annual listing to the Franchise Tax Board, in a form
10 and manner agreed upon by the California Tax Credit Allocation
11 Committee and the Franchise Tax Board, of the taxpayers that
12 have sold or purchased a credit pursuant to this subdivision.

13 (3) A credit may be sold pursuant to this subdivision to more
14 than one unrelated party, and shall not be resold by the unrelated
15 party to another taxpayer or other party.

16 (4) Notwithstanding any other provision of law, the taxpayer
17 that originally received the credit that is sold pursuant to paragraph
18 (1) shall remain solely liable for all obligations and liabilities
19 imposed on the taxpayer by this section with respect to the credit,
20 none of which shall apply to any party to whom the credit has been
21 sold or subsequently transferred. Parties who purchase credits
22 pursuant to paragraph (1) shall be entitled to utilize the purchased
23 credits in the same manner in which the taxpayer that originally
24 received the credit could utilize them.

25 (5) A taxpayer shall not sell a credit allowed by this section if
26 the taxpayer was allowed the credit on any tax return of the
27 taxpayer.

28 (6) Notwithstanding paragraph (1), the taxpayer, with the
29 approval of the Executive Director of the California Tax Credit
30 Allocation Committee, may rescind the election to sell all or any
31 portion of the credit allowed under this section if the consideration
32 for the credit falls below 80% of the amount of the credit after the
33 California Tax Credit Allocation Committee reservation.

34 (s) The amendments to this section made by Chapter 1222 of
35 the Statutes of 1993 shall apply only to taxable years beginning
36 on or after January 1, 1994.

37 SEC. 3. Section 23610.5 of the Revenue and Taxation Code
38 is amended to read:

39 23610.5. (a) (1) There shall be allowed as a credit against the
40 “tax,” as defined by Section 23036, a state low-income housing

1 tax credit in an amount equal to the amount determined in
2 subdivision (c), computed in accordance with Section 42 of the
3 Internal Revenue Code, relating to low-income housing credit,
4 except as otherwise provided in this section.

5 (2) “Taxpayer,” for purposes of this section, means the sole
6 owner in the case of a “C” corporation, the partners in the case of
7 a partnership, and the shareholders in the case of an “S”
8 corporation.

9 (3) “Housing sponsor,” for purposes of this section, means the
10 sole owner in the case of a “C” corporation, the partnership in the
11 case of a partnership, and the “S” corporation in the case of an “S”
12 corporation.

13 (b) (1) The amount of the credit allocated to any housing
14 sponsor shall be authorized by the California Tax Credit Allocation
15 Committee, or any successor thereof, based on a project’s need
16 for the credit for economic feasibility in accordance with the
17 requirements of this section.

18 (A) The low-income housing project shall be located in
19 California and shall meet either of the following requirements:

20 (i) Except for projects to provide farmworker housing, as defined
21 in subdivision (h) of Section 50199.7 of the Health and Safety
22 Code, that are allocated credits solely under the set-aside described
23 in subdivision (c) of Section 50199.20 of the Health and Safety
24 Code, the project’s housing sponsor has been allocated by the
25 California Tax Credit Allocation Committee a credit for federal
26 income tax purposes under Section 42 of the Internal Revenue
27 Code, relating to low-income housing credit.

28 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
29 Internal Revenue Code, relating to special rule where 50 percent
30 or more of building is financed with tax-exempt bonds subject to
31 volume cap.

32 (B) The California Tax Credit Allocation Committee shall not
33 require fees for the credit under this section in addition to those
34 fees required for applications for the tax credit pursuant to Section
35 42 of the Internal Revenue Code, relating to low-income housing
36 credit. The committee may require a fee if the application for the
37 credit under this section is submitted in a calendar year after the
38 year the application is submitted for the federal tax credit.

39 (C) (i) For a project that receives a preliminary reservation of
40 the state low-income housing tax credit, allowed pursuant to

1 subdivision (a), on or after January 1, 2009, the credit shall be
2 allocated to the partners of a partnership owning the project in
3 accordance with the partnership agreement, regardless of how the
4 federal low-income housing tax credit with respect to the project
5 is allocated to the partners, or whether the allocation of the credit
6 under the terms of the agreement has substantial economic effect,
7 within the meaning of Section 704(b) of the Internal Revenue
8 Code, relating to determination of distributive share.

9 (ii) To the extent the allocation of the credit to a partner under
10 this section lacks substantial economic effect, any loss or deduction
11 otherwise allowable under this part that is attributable to the sale
12 or other disposition of that partner's partnership interest made prior
13 to the expiration of the federal credit shall not be allowed in the
14 taxable year in which the sale or other disposition occurs, but shall
15 instead be deferred until and treated as if it occurred in the first
16 taxable year immediately following the taxable year in which the
17 federal credit period expires for the project described in clause (i).

18 (iii) This subparagraph shall not apply to a project that receives
19 a preliminary reservation of state low-income housing tax credits
20 under the set-aside described in subdivision (c) of Section 50199.20
21 of the Health and Safety Code unless the project also receives a
22 preliminary reservation of federal low-income housing tax credits.

23 (2) (A) The California Tax Credit Allocation Committee shall
24 certify to the housing sponsor the amount of tax credit under this
25 section allocated to the housing sponsor for each credit period.

26 (B) In the case of a partnership or an "S" corporation, the
27 housing sponsor shall provide a copy of the California Tax Credit
28 Allocation Committee certification to the taxpayer.

29 (C) The taxpayer shall, upon request, provide a copy of the
30 certification to the Franchise Tax Board.

31 (D) All elections made by the taxpayer pursuant to Section 42
32 of the Internal Revenue Code, relating to low-income housing
33 credit, shall apply to this section.

34 (E) (i) Except as described in clause (ii), for buildings located
35 in designated difficult development areas (DDAs) or qualified
36 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
37 Internal Revenue Code, relating to increase in credit for buildings
38 in high-cost areas, credits may be allocated under this section in
39 the amounts prescribed in subdivision (c), provided that the amount
40 of credit allocated under Section 42 of the Internal Revenue Code,

1 relating to low-income housing credit, is computed on 100 percent
2 of the qualified basis of the building.

3 (ii) Notwithstanding clause (i), the California Tax Credit
4 Allocation Committee may allocate the credit for buildings located
5 in DDAs or QCTs that are restricted to having 50 percent of its
6 occupants be special needs households, as defined in the California
7 Code of Regulations by the California Tax Credit Allocation
8 Committee, even if the taxpayer receives federal credits pursuant
9 to Section 42(d)(5)(B) of the Internal Revenue Code, relating to
10 increase in credit for buildings in high-cost areas, provided that
11 the credit allowed under this section shall not exceed 30 percent
12 of the eligible basis of the building.

13 (G) (i) The California Tax Credit Allocation Committee may
14 allocate a credit under this section in exchange for a credit allocated
15 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,
16 relating to increase in credit for buildings in high-cost areas, in
17 amounts up to 30 percent of the eligible basis of a building if the
18 credits allowed under Section 42 of the Internal Revenue Code,
19 relating to low-income housing credit, are reduced by an equivalent
20 amount.

21 (ii) An equivalent amount shall be determined by the California
22 Tax Credit Allocation Committee based upon the relative amount
23 required to produce an equivalent state tax credit to the taxpayer.

24 (c) Section 42(b) of the Internal Revenue Code, relating to
25 applicable percentage, shall be modified as follows:

26 (1) In the case of any qualified low-income building placed in
27 service by the housing sponsor during 1987, the term “applicable
28 percentage” means 9 percent for each of the first three years and
29 3 percent for the fourth year for new buildings (whether or not the
30 building is federally subsidized) and for existing buildings.

31 (2) In the case of any qualified low-income building that receives
32 an allocation after 1989 and is a new building not federally
33 subsidized, the term “applicable percentage” means the following:

34 (A) For each of the first three years, the percentage prescribed
35 by the Secretary of the Treasury for new buildings that are not
36 federally subsidized for the taxable year, determined in accordance
37 with the requirements of Section 42(b)(2) of the Internal Revenue
38 Code, relating to temporary minimum credit rate for nonfederally
39 subsidized new buildings, in lieu of the percentage prescribed in
40 Section 42(b)(1)(A) of the Internal Revenue Code.

1 (B) For the fourth year, the difference between 30 percent and
2 the sum of the applicable percentages for the first three years.

3 (3) In the case of any qualified low-income building that receives
4 an allocation after 1989 and that is a new building that is federally
5 subsidized or that is an existing building that is “at risk of
6 conversion,” the term “applicable percentage” means the following:

7 (A) For each of the first three years, the percentage prescribed
8 by the Secretary of the Treasury for new buildings that are federally
9 subsidized for the taxable year.

10 (B) For the fourth year, the difference between 13 percent and
11 the sum of the applicable percentages for the first three years.

12 (4) For purposes of this section, the term “at risk of conversion,”
13 with respect to an existing property means a property that satisfies
14 all of the following criteria:

15 (A) The property is a multifamily rental housing development
16 in which at least 50 percent of the units receive governmental
17 assistance pursuant to any of the following:

18 (i) New construction, substantial rehabilitation, moderate
19 rehabilitation, property disposition, and loan management set-aside
20 programs, or any other program providing project-based assistance
21 pursuant to Section 8 of the United States Housing Act of 1937,
22 Section 1437f of Title 42 of the United States Code, as amended.

23 (ii) The Below-Market-Interest-Rate Program pursuant to
24 Section 221(d)(3) of the National Housing Act, Sections
25 1715l(d)(3) and (5) of Title 12 of the United States Code.

26 (iii) Section 236 of the National Housing Act, Section 1715z-1
27 of Title 12 of the United States Code.

28 (iv) Programs for rent supplement assistance pursuant to Section
29 101 of the Housing and Urban Development Act of 1965, Section
30 1701s of Title 12 of the United States Code, as amended.

31 (v) Programs pursuant to Section 515 of the Housing Act of
32 1949, Section 1485 of Title 42 of the United States Code, as
33 amended.

34 (vi) The low-income housing credit program set forth in Section
35 42 of the Internal Revenue Code, relating to low-income housing
36 credit.

37 (B) The restrictions on rent and income levels will terminate or
38 the federally insured mortgage on the property is eligible for
39 prepayment any time within five years before or after the date of
40 application to the California Tax Credit Allocation Committee.

1 (C) The entity acquiring the property enters into a regulatory
2 agreement that requires the property to be operated in accordance
3 with the requirements of this section for a period equal to the
4 greater of 55 years or the life of the property.

5 (D) The property satisfies the requirements of Section 42(e) of
6 the Internal Revenue Code relating to rehabilitation expenditures
7 treated as a separate new building, except that the provisions of
8 Section 42(e)(3)(A)(ii)(I) shall not apply.

9 (d) The term “qualified low-income housing project” as defined
10 in Section 42(c)(2) of the Internal Revenue Code, relating to
11 qualified low-income building, is modified by adding the following
12 requirements:

13 (1) The taxpayer shall be entitled to receive a cash distribution
14 from the operations of the project, after funding required reserves,
15 that, at the election of the taxpayer, is equal to:

16 (A) An amount not to exceed 8 percent of the lesser of:

17 (i) The owner equity, which shall include the amount of the
18 capital contributions actually paid to the housing sponsor and shall
19 not include any amounts until they are paid on an investor note.

20 (ii) Twenty percent of the adjusted basis of the building as of
21 the close of the first taxable year of the credit period.

22 (B) The amount of the cashflow from those units in the building
23 that are not low-income units. For purposes of computing cashflow
24 under this subparagraph, operating costs shall be allocated to the
25 low-income units using the “floor space fraction,” as defined in
26 Section 42 of the Internal Revenue Code, relating to low-income
27 housing credit.

28 (C) Any amount allowed to be distributed under subparagraph
29 (A) that is not available for distribution during the first five years
30 of the compliance period may be accumulated and distributed any
31 time during the first 15 years of the compliance period but not
32 thereafter.

33 (2) The limitation on return shall apply in the aggregate to the
34 partners if the housing sponsor is a partnership and in the aggregate
35 to the shareholders if the housing sponsor is an “S” corporation.

36 (3) The housing sponsor shall apply any cash available for
37 distribution in excess of the amount eligible to be distributed under
38 paragraph (1) to reduce the rent on rent-restricted units or to
39 increase the number of rent-restricted units subject to the tests of

1 Section 42(g)(1) of the Internal Revenue Code, relating to in
2 general.

3 (e) The provisions of Section 42(f) of the Internal Revenue
4 Code, relating to definition and special rules relating to credit
5 period, shall be modified as follows:

6 (1) The term “credit period” as defined in Section 42(f)(1) of
7 the Internal Revenue Code, relating to credit period defined, is
8 modified by substituting “four taxable years” for “10 taxable
9 years.”

10 (2) The special rule for the first taxable year of the credit period
11 under Section 42(f)(2) of the Internal Revenue Code, relating to
12 special rule for first year of credit period, shall not apply to the tax
13 credit under this section.

14 (3) Section 42(f)(3) of the Internal Revenue Code, relating to
15 determination of applicable percentage with respect to increases
16 in qualified basis after first year of credit period, is modified to
17 read:

18 If, as of the close of any taxable year in the compliance period,
19 after the first year of the credit period, the qualified basis of any
20 building exceeds the qualified basis of that building as of the close
21 of the first year of the credit period, the housing sponsor, to the
22 extent of its tax credit allocation, shall be eligible for a credit on
23 the excess in an amount equal to the applicable percentage
24 determined pursuant to subdivision (c) for the four-year period
25 beginning with the later of the taxable years in which the increase
26 in qualified basis occurs.

27 (f) The provisions of Section 42(h) of the Internal Revenue
28 Code, relating to limitation on aggregate credit allowable with
29 respect to projects located in a state, shall be modified as follows:

30 (1) Section 42(h)(2) of the Internal Revenue Code, relating to
31 allocated credit amount to apply to all taxable years ending during
32 or after credit allocation year, shall not be applicable and instead
33 the following provisions shall be applicable:

34 The total amount for the four-year credit period of the housing
35 credit dollars allocated in a calendar year to any building shall
36 reduce the aggregate housing credit dollar amount of the California
37 Tax Credit Allocation Committee for the calendar year in which
38 the allocation is made.

39 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
40 (7), and (8) of Section 42(h) of the Internal Revenue Code, relating

1 to limitation on aggregate credit allowable with respect to projects
2 located in a state, shall not be applicable.

3 (g) The aggregate housing credit dollar amount that may be
4 allocated annually by the California Tax Credit Allocation
5 Committee pursuant to this section, Section 12206, and Section
6 17058 shall be an amount equal to the sum of all the following:

7 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
8 year, and, for the 2002 calendar year and each calendar year
9 thereafter, seventy million dollars (\$70,000,000) increased by the
10 percentage, if any, by which the Consumer Price Index for the
11 preceding calendar year exceeds the Consumer Price Index for the
12 2001 calendar year. For the purposes of this paragraph, the term
13 “Consumer Price Index” means the last Consumer Price Index for
14 All Urban Consumers published by the federal Department of
15 Labor.

16 (2) The unused housing credit ceiling, if any, for the preceding
17 calendar years.

18 (3) The amount of housing credit ceiling returned in the calendar
19 year. For purposes of this paragraph, the amount of housing credit
20 dollar amount returned in the calendar year equals the housing
21 credit dollar amount previously allocated to any project that does
22 not become a qualified low-income housing project within the
23 period required by this section or to any project with respect to
24 which an allocation is canceled by mutual consent of the California
25 Tax Credit Allocation Committee and the allocation recipient.

26 (4) Five hundred thousand dollars (\$500,000) per calendar year
27 for projects to provide farmworker housing, as defined in
28 subdivision (h) of Section 50199.7 of the Health and Safety Code.

29 (5) The amount of any unallocated or returned credits under
30 former Sections 17053.14, 23608.2, and 23608.3, as those sections
31 read prior to January 1, 2009, until fully exhausted for projects to
32 provide farmworker housing, as defined in subdivision (h) of
33 Section 50199.7 of the Health and Safety Code.

34 (h) The term “compliance period” as defined in Section 42(i)(1)
35 of the Internal Revenue Code, relating to compliance period, is
36 modified to mean, with respect to any building, the period of 30
37 consecutive taxable years beginning with the first taxable year of
38 the credit period with respect thereto.

1 (i) Section 42(j) of the Internal Revenue Code, relating to
2 recapture of credit, shall not be applicable and the following shall
3 be substituted in its place:

4 The requirements of this section shall be set forth in a regulatory
5 agreement between the California Tax Credit Allocation Committee
6 and the housing sponsor, and this agreement shall be subordinated,
7 when required, to any lien or encumbrance of any banks or other
8 institutional lenders to the project. The regulatory agreement
9 entered into pursuant to subdivision (f) of Section 50199.14 of the
10 Health and Safety Code shall apply, provided that the agreement
11 includes all of the following provisions:

12 (1) A term not less than the compliance period.

13 (2) A requirement that the agreement be recorded in the official
14 records of the county in which the qualified low-income housing
15 project is located.

16 (3) A provision stating which state and local agencies can
17 enforce the regulatory agreement in the event the housing sponsor
18 fails to satisfy any of the requirements of this section.

19 (4) A provision that the regulatory agreement shall be deemed
20 a contract enforceable by tenants as third-party beneficiaries thereto
21 and that allows individuals, whether prospective, present, or former
22 occupants of the building, who meet the income limitation
23 applicable to the building, the right to enforce the regulatory
24 agreement in any state court.

25 (5) A provision incorporating the requirements of Section 42
26 of the Internal Revenue Code, relating to low-income housing
27 credit, as modified by this section.

28 (6) A requirement that the housing sponsor notify the California
29 Tax Credit Allocation Committee or its designee if there is a
30 determination by the Internal Revenue Service that the project is
31 not in compliance with Section 42(g) of the Internal Revenue Code,
32 relating to qualified low-income housing project.

33 (7) A requirement that the housing sponsor, as security for the
34 performance of the housing sponsor's obligations under the
35 regulatory agreement, assign the housing sponsor's interest in rents
36 that it receives from the project, provided that until there is a
37 default under the regulatory agreement, the housing sponsor is
38 entitled to collect and retain the rents.

39 (8) A provision that the remedies available in the event of a
40 default under the regulatory agreement that is not cured within a

1 reasonable cure period include, but are not limited to, allowing
2 any of the parties designated to enforce the regulatory agreement
3 to collect all rents with respect to the project; taking possession of
4 the project and operating the project in accordance with the
5 regulatory agreement until the enforcer determines the housing
6 sponsor is in a position to operate the project in accordance with
7 the regulatory agreement; applying to any court for specific
8 performance; securing the appointment of a receiver to operate
9 the project; or any other relief as may be appropriate.

10 (j) (1) The committee shall allocate the housing credit on a
11 regular basis consisting of two or more periods in each calendar
12 year during which applications may be filed and considered. The
13 committee shall establish application filing deadlines, the maximum
14 percentage of federal and state low-income housing tax credit
15 ceiling that may be allocated by the committee in that period, and
16 the approximate date on which allocations shall be made. If the
17 enactment of federal or state law, the adoption of rules or
18 regulations, or other similar events prevent the use of two allocation
19 periods, the committee may reduce the number of periods and
20 adjust the filing deadlines, maximum percentage of credit allocated,
21 and the allocation dates.

22 (2) The committee shall adopt a qualified allocation plan, as
23 provided in Section 42(m)(1) of the Internal Revenue Code, relating
24 to plans for allocation of credit among projects. In adopting this
25 plan, the committee shall comply with the provisions of Sections
26 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,
27 relating to qualified allocation plan and relating to certain selection
28 criteria must be used, respectively.

29 (3) Notwithstanding Section 42(m) of the Internal Revenue
30 Code, relating to responsibilities of housing credit agencies, the
31 California Tax Credit Allocation Committee shall allocate housing
32 credits in accordance with the qualified allocation plan and
33 regulations, which shall include the following provisions:

34 (A) All housing sponsors, as defined by paragraph (3) of
35 subdivision (a), shall demonstrate at the time the application is
36 filed with the committee that the project meets the following
37 threshold requirements:

38 (i) The housing sponsor shall demonstrate that there is a need
39 for low-income housing in the community or region for which it
40 is proposed.

- 1 (ii) The project’s proposed financing, including tax credit
2 proceeds, shall be sufficient to complete the project and shall be
3 adequate to operate the project for the extended use period.
- 4 (iii) The project shall have enforceable financing commitments,
5 either construction or permanent financing, for at least 50 percent
6 of the total estimated financing of the project.
- 7 (iv) The housing sponsor shall have and maintain control of the
8 site for the project.
- 9 (v) The housing sponsor shall demonstrate that the project
10 complies with all applicable local land use and zoning ordinances.
- 11 (vi) The housing sponsor shall demonstrate that the project
12 development team has the experience and the financial capacity
13 to ensure project completion and operation for the extended use
14 period.
- 15 (vii) The housing sponsor shall demonstrate the amount of tax
16 credit that is necessary for the financial feasibility of the project
17 and its viability as a qualified low-income housing project
18 throughout the extended use period, taking into account operating
19 expenses, a supportable debt service, reserves, funds set aside for
20 rental subsidies and required equity, and a development fee that
21 does not exceed a specified percentage of the eligible basis of the
22 project prior to inclusion of the development fee in the eligible
23 basis, as determined by the committee.
- 24 (B) The committee shall give a preference to those projects
25 satisfying all of the threshold requirements of subparagraph (A)
26 if both of the following apply:
 - 27 (i) The project serves the lowest income tenants at rents
28 affordable to those tenants.
 - 29 (ii) The project is obligated to serve qualified tenants for the
30 longest period.
- 31 (C) In addition to the provisions of subparagraphs (A) and (B),
32 the committee shall use the following criteria in allocating housing
33 credits:
 - 34 (i) Projects serving large families in which a substantial number,
35 as defined by the committee, of all residential units are low-income
36 units with three and more bedrooms.
 - 37 (ii) Projects providing single-room occupancy units serving
38 very low income tenants.
 - 39 (iii) Existing projects that are “at risk of conversion,” as defined
40 by paragraph (4) of subdivision (c).

1 (iv) Projects for which a public agency provides direct or indirect
2 long-term financial support for at least 15 percent of the total
3 project development costs or projects for which the owner's equity
4 constitutes at least 30 percent of the total project development
5 costs.

6 (v) Projects that provide tenant amenities not generally available
7 to residents of low-income housing projects.

8 (4) For purposes of allocating credits pursuant to this section,
9 the committee shall not give preference to any project by virtue
10 of the date of submission of its application except to break a tie
11 when two or more of the projects have an equal rating.

12 (5) Not less than 20 percent of the low-income housing tax
13 credits available annually under this section, Section 12206, and
14 Section 17058 shall be set aside for allocation to rural areas as
15 defined in Section 50199.21 of the Health and Safety Code. Any
16 amount of credit set aside for rural areas remaining on or after
17 October 31 of any calendar year shall be available for allocation
18 to any eligible project. No amount of credit set aside for rural areas
19 shall be considered available for any eligible project so long as
20 there are eligible rural applications pending on October 31.

21 (k) Section 42(l) of the Internal Revenue Code, relating to
22 certifications and other reports to secretary, shall be modified as
23 follows:

24 The term "secretary" shall be replaced by the term "Franchise
25 Tax Board."

26 (l) In the case where the credit allowed under this section
27 exceeds the "tax," the excess may be carried over to reduce the
28 "tax" in the following year, and succeeding years if necessary,
29 until the credit has been exhausted.

30 (m) A project that received an allocation of a 1989 federal
31 housing credit dollar amount shall be eligible to receive an
32 allocation of a 1990 state housing credit dollar amount, subject to
33 all of the following conditions:

34 (1) The project was not placed in service prior to 1990.

35 (2) To the extent the amendments made to this section by the
36 Statutes of 1990 conflict with any provisions existing in this section
37 prior to those amendments, the prior provisions of law shall prevail.

38 (3) Notwithstanding paragraph (2), a project applying for an
39 allocation under this subdivision shall be subject to the
40 requirements of paragraph (3) of subdivision (j).

1 (n) The credit period with respect to an allocation of credit in
2 1989 by the California Tax Credit Allocation Committee of which
3 any amount is attributable to unallocated credit from 1987 or 1988
4 shall not begin until after December 31, 1989.

5 (o) The provisions of Section 11407(a) of Public Law 101-508,
6 relating to the effective date of the extension of the low-income
7 housing credit, shall apply to calendar years after 1989.

8 (p) The provisions of Section 11407(c) of Public Law 101-508,
9 relating to election to accelerate credit, shall not apply.

10 (q) (1) A corporation may elect to assign any portion of any
11 credit allowed under this section to one or more affiliated
12 corporations for each taxable year in which the credit is allowed.
13 For purposes of this subdivision, “affiliated corporation” has the
14 meaning provided in subdivision (b) of Section 25110, as that
15 section was amended by Chapter 881 of the Statutes of 1993, as
16 of the last day of the taxable year in which the credit is allowed,
17 except that “100 percent” is substituted for “more than 50 percent”
18 wherever it appears in the section, as that section was amended by
19 Chapter 881 of the Statutes of 1993, and “voting common stock”
20 is substituted for “voting stock” wherever it appears in the section,
21 as that section was amended by Chapter 881 of the Statutes of
22 1993.

23 (2) The election provided in paragraph (1):

24 (A) May be based on any method selected by the corporation
25 that originally receives the credit.

26 (B) Shall be irrevocable for the taxable year the credit is allowed,
27 once made.

28 (C) May be changed for any subsequent taxable year if the
29 election to make the assignment is expressly shown on each of the
30 returns of the affiliated corporations that assign and receive the
31 credits.

32 (r) Any unused credit may continue to be carried forward, as
33 provided in subdivision (l), until the credit has been exhausted.

34 This section shall remain in effect on and after December 1,
35 1990, for as long as Section 42 of the Internal Revenue Code,
36 relating to low-income housing credit, remains in effect.

37 (s) ~~(t)~~ Notwithstanding any other law, for any credits awarded
38 under this section for taxable years beginning on or after January
39 1, 2016, and before January 1, 2026, a taxpayer may make an
40 irrevocable election in its application to the California Tax Credit

1 Allocation Committee to sell all or any portion of any credit
2 allowed under this section to one or more unrelated parties for
3 each taxable year in which the credit is allowed for consideration
4 that is not less than 80 percent of the amount of the credit. A
5 *taxpayer shall notify the California Tax Credit Allocation*
6 *Committee of this election within ten days.*

7 ~~(2) (A) The sale authorized by paragraph (1) may be~~
8 ~~documented based on any method selected by the taxpayer that~~
9 ~~originally receives the credit.~~

10 ~~(B) The sale authorized by paragraph (1) may be changed for~~
11 ~~any subsequent taxable year if the sale is expressly shown on each~~
12 ~~of the returns of both the transferor and the transferee that sell and~~
13 ~~receive the credit.~~

14 ~~(C) (i) The taxpayer that originally received the credit shall~~
15 ~~report to the California Tax Credit Allocation Committee prior to~~
16 ~~the sale of the credit, in the form and manner specified by the~~
17 ~~California Tax Credit Allocation Committee, all required~~
18 ~~information regarding the purchase and sale of the credit, including~~
19 ~~the social security or other taxpayer identification number of the~~
20 ~~unrelated party to whom the credit has been sold, the face amount~~
21 ~~of the credit sold, and the amount of consideration received by the~~
22 ~~taxpayer for the sale of the credit.~~

23 ~~(ii) The California Tax Credit Allocation Committee shall~~
24 ~~provide an annual listing to the Franchise Tax Board, in a form~~
25 ~~and manner agreed upon by the California Tax Credit Allocation~~
26 ~~Committee and the Franchise Tax Board, of the taxpayers that~~
27 ~~have sold or purchased a credit pursuant to this subdivision.~~

28 ~~(3) A credit may be sold pursuant to this subdivision to more~~
29 ~~than one unrelated party, and shall not be resold by the unrelated~~
30 ~~party to another taxpayer or other party.~~

31 ~~(4) Notwithstanding any other provision of law, the taxpayer~~
32 ~~that originally received the credit that is sold pursuant to paragraph~~
33 ~~(1) shall remain solely liable for all obligations and liabilities~~
34 ~~imposed on the taxpayer by this section with respect to the credit,~~
35 ~~none of which shall apply to any party to whom the credit has been~~
36 ~~sold or subsequently transferred. Parties who purchase credits~~
37 ~~pursuant to paragraph (1) shall be entitled to utilize the purchased~~
38 ~~credits in the same manner in which the taxpayer that originally~~
39 ~~received the credit could utilize them.~~

1 ~~(5) A taxpayer shall not sell a credit allowed by this section if~~
2 ~~the taxpayer was allowed the credit on any tax return of the~~
3 ~~taxpayer.~~

4 ~~(6) Notwithstanding paragraph (1), the taxpayer, with the~~
5 ~~approval of the Executive Director of the California Tax Credit~~
6 ~~Allocation Committee, may rescind the election to sell all or any~~
7 ~~portion of the credit allowed under this section if the consideration~~
8 ~~for the credit falls bellow 80% of the amount of the credit after~~
9 ~~the California Tax Credit Allocation Committee reservation.~~

10 (t) The amendments to this section made by Chapter 1222 of
11 the Statutes of 1993 shall apply only to taxable years beginning
12 on or after January 1, 1994, except that paragraph (1) of subdivision
13 (q), as amended, shall apply to taxable years beginning on or after
14 January 1, 1993.

15 SEC. 4. This act provides for a tax levy within the meaning of
16 Article IV of the Constitution and shall go into immediate effect.